

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U.S. WATER SERVICES, INC.,

Plaintiff,

v.

GREG ITOH,

Defendant.

CASE NO. C11-5144BHS

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER

This matter comes before the Court on Plaintiff's ("U.S. Water") motion for a temporary restraining order ("TRO"). Dkt. 9. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file, held a hearing on March 3, 2011, and heard argument of the parties, and hereby grants in part and denies in part the motion for the reasons stated herein. This order is preliminary and made only for purposes of this TRO. On March 2, 2011, Itoh filed an amended answer to U.S. Water's complaint but did not directly respond to the motion for TRO. Dkt. 18.

I. PROCEDURAL HISTORY

On February 23, 2011, U.S. Water moved the Court to enter a temporary restraining order against Defendant ("Itoh"). Dkt. 9. On March 3, 2011, the Court conducted a hearing on the matter.

II. FINDINGS OF FACT

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2 1. U.S. Water is a Minnesota corporation with its principal place of business in
3 Minnesota that sells water treatment and purification equipment, materials and services.

4 2. On or about February 4, 2011, U.S. Water entered into an Asset Purchase
5 Agreement with Wellons Water Technology, LLC ("Wellons").

6 3. As a result of this transaction, U.S. Water now does business in the Pacific
7 Northwest as Wellons. One of the purposes of the asset purchase was to give U.S. Water
8 opportunities to sell and to do business with Wellons' customer base. Wellons sells and
9 distributes water treatment and purification equipment and materials and provides related
10 services.

11 4. Wellons employed Itoh from March 9, 2010 through February 3, 2011 as a
12 sales representative. In this position, Itoh's job responsibilities included selling Wellons'
13 products such as water treatment equipment, chemicals, and related items. Itoh called
14 upon customers and prospective customers in Washington and Oregon.

15 5. In emails to Wellons' customers (specifically Total System Services, Inc
16 ("TSS")), Itoh attempted to divert TSS' business from Wellons to Water Care (his new
17 employer) by stating that Itoh would have been required to forfeit the accounts with
18 which he had done business at Wellons, that U.S. Water only valued accounts worth
19 \$50,000 or more in annual revenue, that continuing employment after the asset purchase
20 would have required Itoh to abandon his customers, and that U.S. Water is misleading the
21 other Wellons' sales representatives about their employment.

22 6. The emails sent to TSS further attempted to persuade TSS to move its
23 account from U.S. Water to Water Care by claiming that Itoh had made financial
24 sacrifices for the benefit of TSS and suggested that TSS follow Itoh to his new place of
25 employment due to loyalty and in recognition of Itoh's sacrifices.
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1 7. Itoh has communicated with or called upon other Wellons' customers for
2 the express purpose of diverting their business to Water Care. Itoh admitted during the
3 hearing on the TRO that he is currently servicing twelve of his clients that were formerly
4 his clients at Wellons (i.e., he has solicited them away from Wellons). Several other of
5 Wellons' customers have confirmed that Itoh contacted them and requested their
6 business.

7 8. During his employment at Wellons, Itoh persuaded one of Wellons' office
8 employees to give him a complete list of Wellons' customers located in Washington. This
9 list was not routinely shared among salespeople. As a result, Itoh managed to obtain,
10 though he contends he has returned, an 82-page list of Wellons' Washington customers
11 with all of their contact information. Wellons treated this information as confidential
12 trade secrets and the customer data was not widely known.

14 **III. CONCLUSIONS OF LAW**

15 1. The Court has subject matter jurisdiction because there is complete
16 diversity of citizenship between U.S. Water (a Minnesota Plaintiff) and Itoh (an Oregon
17 Defendant), and the amount in controversy exceeds \$75,000.

18 2. The Court has personal jurisdiction over Itoh because he has done business
19 in Washington, and the harm alleged by U.S. Water was done for the benefit of a
20 Washington competitor, namely Water Care.


21 3. U.S. Water is likely to prevail on its claims for violations of the Washington
22 Uniform Trade Secrets Act under Chapter 19 of the Revised Code of Washington.

23 4. The use of Wellons' trade secrets are likely to be found to have been
24 conducted in violation of the relevant Washington Code and likely constitute a
25 misappropriation of trade secrets and confidential information. U.S. Water is likely to
26 prevail in establishing that such trade secrets and confidential information was used to
27 solicit customers for Itoh's new employer.
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1 to, any officer, agent, representative, and/or employee of Water Care, from
2 misappropriating, using, or disclosing Wellons' trade secrets and
3 confidential information. Specifically, Itoh is not to use or reveal any
4 Wellons' customer lists or the pricing and purchasing information
5 concerning Wellons' customers.

- 6 (5) During the period of restraint under this TRO, Itoh is not restrained from
7 continuing to serve the twelve customers who previously were served by
8 Wellons and serve now as his clients at Water Care. Servicing these twelve
9 clients will not violate the terms of this TRO. HOWEVER, Itoh serves
10 these clients at his own peril; should U.S. Water prevail on the merits of its
11 claims, not limited to this TRO, Itoh may be liable to U.S. Water for
12 whatever relief flows therefrom, to include any damages or other relief
13 specifically traceable to these twelve clients that Itoh admits to having
14 diverted from Wellons to Water Care.
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16 DATED this 3rd day of March, 2011.

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19 BENJAMIN H. SETTLE
United States District Judge
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